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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,599	09/15/2003	Bruce L. Kennedy	02580-P0085B	2356

24126 7590 06/09/2005

ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD, CT 06905-5619

EXAMINER

SMITH, PHILIP ROBERT

ART UNIT PAPER NUMBER

3739

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/662,599	KENNEDY, BRUCE L.	
	Examiner	Art Unit	
	Philip R. Smith	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 and 32-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/19/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

- [01] Claim 29 is objected to because of the following informalities: --a expert system-- should read --an expert system--. Appropriate correction is required.

Claim Rejections - 35 USC § 112, Paragraph One

- [02] The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- [03] Claims 20-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

[03a] *With regard to claim 20:* There is no disclosure in the specification that the touch screen is unpluggable from the housing, nor is there any suggestion in Figures 5a, 5b, 5c, 14a, 14b, or 15.

[03b] *With regard to claim 21:* There is no disclosure in the specification of what a "stackable mating plug portion" is.

Claim Rejections - 35 U.S.C. 112, Paragraph Two

[04] The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

[05] Claims 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The reasons are set forth above in First Paragraph rejections under 35 U.S.C. 112.

Claim Rejections - 35 USC § 102

[06] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

[07] Claims 19-27 & 29-31 are rejected under 35 U.S.C. 102(a) as being anticipated by Winkler (6,411,851), patented 25 June 2002.

[08] *With regard to claim 19:* Winkler discloses a medical instrument having touch screen control comprising

[08a] a touch screen for entering control commands (comprising “display screen 206” & “stylus 208,” column 12/ lines 6-10).

[08b] a processor (“programmer 200” comprising “computer circuitry”) for

receiving said control commands (12/28-39) and for generating control signals (13/13-21) to operate said medical instrument ("implantable medical device IMD 10")

[08c] a housing ("housing 202") for enclosing said processor;

[08d] wherein said touch screen movable between a first position at least partially within a footprint ("folds down in a closed position") of said housing and a second position ("plurality of possible open positions") extended from said footprint of said housing (12/10-27).

[09] *With regard to claim 22:* Winkler discloses in columns 12/66-13/7 that the touch screen can be used by a plurality of medical instruments.

[10] *With regard to claims 23 & 30-31:* As noted above, Winkler discloses that the touch screen slides out of the housing and is deflectable. Deflection, when it occurs, inherently occurs about some axis, which may be called the axis of said housing.

[11] *With regard to claims 24-25:* As noted above, Winkler discloses a "stylus 208" with which to "interact with display screen 206" (13/8-9). It is clear from Fig. 6 that the touch screen slides up and out of the "closed position" into an "open position" where it is lodged in one of a plurality of slots in the housing and propped back at its sides against a rotating support. From this one of a plurality of open positions, the touch screen is clearly more difficult to deflect in the opening direction (propped back against the rotating support) than it is in the closing direction (laid

flat within the housing), enabling the touch screen to interact with "stylus 208" without unintentional deflection.

- [12] *With regard to claim 26:* Touch screens conventionally present a keyboard to the user. Winkler suggests this when he states the following in 12/35-39: "Display screen 206 is the primary input medium for programmer 200, and therefore preferably has sufficient resolution to support operations including selection, gestures, annotation, and character recognition."
- [13] *With regard to claim 27:* Winkler further discloses a sensor ("magnetic programming head 218") in communication with said processor, said sensor receiving control signals to operate said medical instrument ("telemetry link between IMD 10 and programming apparatus 200," 13/13-22).
- [14] *With regard to claim 29:* Winkler further discloses an expert system executing on said processor ("analyzer 210"), said expert system generating control signals to operate said medical instrument (12/40-49).

Claim Rejections - 35 USC § 103

[15] The text of those sections of Title 35, U.S. Code The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[16] Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winkler in view of Bodicker et al. (2002/0193676), filed 29 May 2001. As shown above, Winkler discloses a touch screen as the primary input medium for programmer 200, which executes on said processor and generates control signals to operate a medical instrument. Winkler does not disclose a speech recognition module.

[17] Bodicker discloses in [0013] that touch screens and speech recognition modules are equivalent input mediums for the processors of medical instruments: "single action input operation, such as a mouse click, pressing on a 'next-step' button, touching an area of a touch-screen, or by natural language, if speech recognition is available."

[18] At the time of the invention, it would have been obvious to a person of ordinary skill in the art that in controlling a medical instrument, any effective input medium is sufficient, and that speech recognition may be used in addition, or alternatively to, a touch screen.

Conclusion

- [19] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kenley (6,146,523) discloses a touch screen deflectable about a number of axes. Rosen (2002/0149706) discloses a deflectable LCD display with a slide out mechanism for disposition relative to a housing. Burdorff (6,428,487) discloses a deflectable, rotatable touch screen display.
- [20] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip R Smith whose telephone number is (571) 272 6087. The examiner can normally be reached on 10:00-6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272 4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
- [21] Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

prs



John P. Leubecker
Primary Examiner